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#17

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)  
374611-000310

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at  
(571) 272-3282.

Patent Number: 6,402,070

Application Number: 09/512,935

Issue Date: June 11, 2002

Filing Date: February 25, 2000

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

02/66/2011 BARIAS 600000006 071896

6402070

The above-identified patent:

☐ is a reissue of original Patent No. 01 PL11357 original issue date 700.00 DA  
03 PL11352 980.00 DA  
original application number 2480.00 DA  
original filing date \_\_\_\_\_

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
\_\_\_\_\_ filed on \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

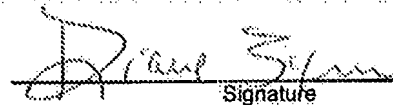
I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

November 3, 2010

Date

  
Signature

Diane Zynn

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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## 1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ 980	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ 2480	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ _____	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ \_\_\_\_\_

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(l)(1) of \$ 700 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700

## 5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ \_\_\_\_\_
- ☒ Please charge Deposit Account No. 071896 the sum of \$ 4,160 .
- ☐ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 071896 .

**7. OVERPAYMENT**

As to any overpayment made, please

☒ Credit to Deposit Account No. 071896

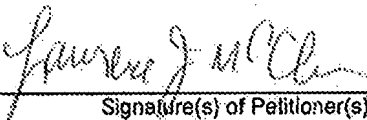
OR

☐ Send refund check**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

**8. SHOWING**

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

**9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.**


Signature(s) of Petitioner(s)

November 3, 2010

Date

Lawrence J. McClure

Typed or printed name(s)

44,228

Registration Number, if applicable

DLA PIPER LLP (US), 1999 Avenue of the Stars,

Address

310-595-3107

Telephone Number

Suite 400, Los Angeles, CA 90067

Address

**ENCLOSURES:**

- ☒ Maintenance Fee Payment
- ☒ Statement why maintenance fee was not paid timely
- ☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
- ☒ Other: APPENDIX 1 and EXHIBIT 1, APPENDIX 2, and APPENDIX 3

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

  
\_\_\_\_\_  
Signature

November 3, 2010  
\_\_\_\_\_  
Date

Lawrence J. McClure  
\_\_\_\_\_  
Type or printed name

44,228  
\_\_\_\_\_  
Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

SEE ATTACHED STATEMENT AND APPENDIX 1 AND EXHIBIT 1, APPENDIX 2 AND APPENDIX 3.

(Please attach additional sheets if additional space is needed)

## Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Noriyuki ISHIDA et al.

Patent No. 6,402,070

Serial No.: 09/512,935

Filed: February 25, 2000

Issued: June 11, 2002

For: BONE-MILL

Art Unit: 3725

**PETITION PURSUANT TO 37 C.F.R. § 1.378  
TO ACCEPT AN UNAVOIDABLY DELAYED  
PAYMENT OF A MAINTENANCE FEE IN AN  
EXPIRED PATENT TO REINSTATE PATENT**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 C.F.R § 1.378, Applicant respectfully petitions to accept an unavoidably delayed payment of a maintenance fee in an expired patent to reinstate patent.

Patent No. 6,402,070 expired on June 11, 2006 due to Applicant's failure to timely pay the maintenance fee. The failure to pay the maintenance fee was unavoidable due to the following circumstances.

Kyocera Corporation (hereinafter referred to as "Kyocera") (Kyoto, Japan), the assignee of Patent No. 6,402,070 relied on Ai Association of Patent and Trademark Attorneys (hereinafter referred to as "Ai Association") (Osaka, Japan) to communicate instructions to the U.S. law firm Hogan Lovells US LLP (hereinafter

referred to as "Hogan Lovells") (formerly Hogan & Hartson LLP). Hogan Lovells, in turn, communicated with the USPTO.

As detailed in the attached declaration by Fumiko Ohtake of Ai Association (Appendix 1 and Exhibit 1), on July 22, 2010, Kyocera informed Ai Association that Kyocera planned to transfer the responsibility of paying the maintenance fees for five cases from Hogan Lovells to another entity.

In view of Kyocera's instructions, on August 2, 2010, Ai Association confirmed the upcoming due dates for the payment of maintenance fees for these five cases. This was done as a prelude to notifying Hogan Lovells that Kyocera intended to transfer the maintenance fee responsibilities. At this time, upon reviewing its records, Ai Association, noticed that a record of a due date for the maintenance fee payment for Patent No. 6,402,070 was omitted from their docketing system.

Ai Association determined that a card used to manage the payment of maintenance fees was not passed on to the person in charge of maintenance fees. Appendix 2 includes a sworn statement, from Mami Kitani, which states,

"I, Mami Kitani, a desk worker in charge of the present case, declare that I should have handed the management card to the person in charge of the annuity management soon after it was outputted but I did not, that I had completely forgot to do so because I had put the document file back to the cabinet with the management card being left in the pocket thereof."

Therefore, the failure to pass this card to the person in charge of maintenance fees was due to human error. It was further determined that this sort of failure never previously occurred (see Declaration of Kosaku Inaoka in Appendix 3). Ai Association concluded that despite human error in this one case, the payment of maintenance fees was being properly managed. Accordingly, the delay in payment of the maintenance fee was unavoidable.

Immediately after learning about the expiration of Patent No. 6,402,070 in August 2010 until the present, Applicant conducted research to determine and

document the reasons why Patent No. 6,402,070 expired. This process included locating individuals involved with Patent No. 6,402,070 and obtaining Statements/Declarations from them. Many of these Statements/Declarations needed to be translated from Japanese to English. Also included in the research process was the locating of documents (many of which were offsite) that contained information about Patent No. 6,402,070 and the payment of maintenance fees.

The above conclusion is supported by the following documents, prepared by Ai Association, that are being submitted concurrently herewith:

Appendix 1, Exhibit 1: Declaration of Fumiko Ohtake

Appendix 2: Sworn Statement of Mami Kitani

Appendix 3: Declaration of Kosaku Inaoka

Kyocera relied upon Ai Association to notify Kyocera when a maintenance fee was due. Upon notification, Kyocera would instruct Ai Association to pay the maintenance fee. In this case, because a record of a due date for the maintenance fee payment for Patent No. 6,402,070 was omitted from Ai Association's docketing system, Kyocera never received a notification. Consequently, Kyocera never sent instructions to pay the maintenance fee.

Hogan Lovells relied upon instructions from Ai Association in order to authorize maintenance fees to be paid to the USPTO. In this case, because instructions were never received from Ai Association, the payment of the maintenance fee was never made.

In accordance with 37 C.F.R § 1.378, please charge Deposit Account No. 07-1896 in the amount of \$4160 to cover the required maintenance fees set forth in § 1.20(e) \$980 (three years and six months) and § 1.20(f) \$2480 (seven years and six months); and the surcharge fee set forth in § 1.20(i)1 \$700.

If it should be determined that for any reason either an additional fee needs to be paid or an insufficient fee or an excessive fee has been paid, please charge any

Patent No. 6,402,070 (Appl. No. 09/512,935)

Attorney Docket No. 374611-000310

Customer No. 73230

insufficiency or credit any overpayment necessary to ensure consideration of the information disclosure statement for the above-identified application to Deposit Account No. 071896.

Respectfully submitted,

DLA PIPER LLP (US).

Date: November 3, 2010

By: 

Lawrence J. McClure

Registration No. 44,228

Attorney for Applicant(s)

1999 Avenue of the Stars, Suite 400

Los Angeles, California 90067

Telephone: 310-595-3000

Facsimile: 310-595-3400

DECLARATION

I, Fumiko Ohtake, have been employed by Ai Association of Patent and Trademark Attorneys since February 15, 2004 and am in charge of payments annuities/maintenance fees for foreign cases.

I do hereby declare that attached an account of what happened about the overdue of the maintenance fee to be true and correct in every respect on my conscience.

Date: October 4, 2010

A handwritten signature in cursive script, appearing to read 'F. Ohtake', is written over a horizontal line.

Fumiko Ohtake

1. Circumstances that the overdue of the maintenance fee payment was found

We were informed from the patentee, KYOCERA CORPORATION on July 22, 2010 that they decided to entrust the other channel with the payment of maintenance fees regarding 5 cases including this case. Based on this instruction, on August 2, 2010, we confirmed the next due date of the maintenance fee payment of each case in order to notify HOGAN LOVELLS US LLP (formerly HOGAN & HARTSON LLP) that KYOCERA intended to transfer the responsibility for fee payments. Reviewing our records, we noticed that a record of due date for fee payment of the said case was omitted from our docketing system, and the due date for the maintenance fee payment of this patent right had been already overdue since December 11, 2005. Immediately we checked Patent Bibliographic Data of the USPTO website, and then found that this patent right had expired for failure to pay maintenance fee on June 11, 2006 without any remedy (see Exhibit 1).

2. Docketing system for due date of fee payments in AI ASSOCIATION

(1) Before 2007

Before 2007, mainly, we had managed the due date of

maintenance fee payments by paper card called by "PAYMENT DUE CARD". Because of a problem in our computer docketing system for intellectual properties at that time, that is, incorrect data in regard to the payment due date might have entered to the system, we primarily used the "PAYMENT DUE CARD" for keeping/watching due dates for maintenance fee payments without cross-check against our computer docketing system. Under our system for checking due date using the "PAYMENT DUE CARD", any problem such as omission has never occurred over the past years.

Specific processes using the "PAYMENT DUE CARD" are as follows:

(1) After a date of issued and a patent number are decided, a clerical staff in charge of a case enters the date of issued and the patent number in our docketing system and put "PAYMENT DUE CARD" into print for the said case.

(11) The "PAYMENT DUE CARD" is delivered to a staff in charge of payments of annuities/maintenance fees, and the staff docket the "PAYMENT DUE CARD" to our payment records.

(2) After 2008

We have employed a new computer docketing system for intellectual properties since 2008, and we take all possible measures concerning data administration. Under the existing circumstances, we are watching and double-checking for all of

due dates for fee payments with the new docketing system and the "PAYMENT DUE CARD" described above. Specifically, about three months prior to the due dates, a list of due dates is output from our docketing system, and the said list is scrutinized with our records of "PAYMENT DUE CARD" closely. We make a careful examination about each case individually in every month.

3. Analysis for cause that this case was omitted from our records

A "PAYMENT DUE CARD" for this case was found in our file. That is, we probably failed the above-mentioned process (ii) for docketing "PAYMENT DUE CARD" to our records. For this reason, it could not be possible that the staff in charge of payments of maintenance fees pursued the due date of the maintenance fee payments for this case.

In 2008, when we switched over to the new docketing system, all of our records were transferred to the new system from the old system; however, since the payment due date in this case had been already overdue, the payment record for this case has not been extracted from our database of the new system.

Transferring to new computer system, we amended records regarding some cases which had discrepancies in data of the due

dates between the new system and the old system. Concerning this case, however, the payment record for the said case has not been extracted at this step, because the due date in the new system were coincident with the date in the old system.

#### 4. Management of the due date at HOGAN LOVELLS US LLP

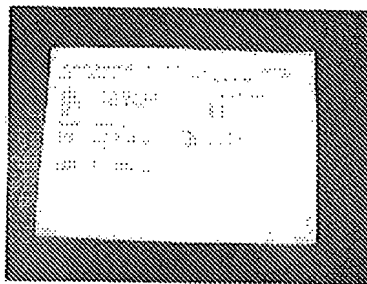
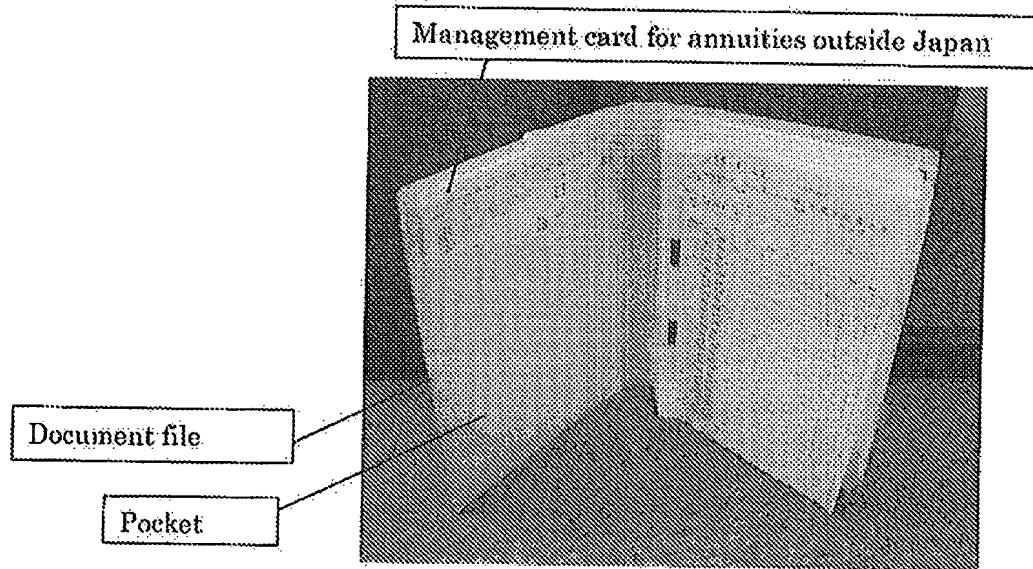
We believe that HOGAN LOVELLS US LLP has watched the due date for maintenance fee payments regarding this case, however, we have had no records of correspondences from HOGAN in our file for this matter. Upon checking Patent Bibliographic Data of the USPTO website, we noticed the records "12/28/2005 Maintenance Fee Reminder Mailed" (see Exhibit 1). This shows that the USPTO sent to HOGAN "Maintenance Fee Reminder", however, we have received no reminder or no report from HOGAN in this matter.



United States  
Patent and  
Trademark Office

Exhibit 1

Patent Bibliographic Data				08/02/2010 02:23 AM	
Patent Number:	6402070		Application Number:	09512935	
Issue Date:	06/11/2002		Filing Date:	02/25/2000	
Title:	BONE-MILL				
Status:	Expired for non-payment on: 06/11/2006			Entity:	Large
Window Opens:	06/11/2005	Surcharge Date:	12/13/2005	Expiration:	06/11/2006
Fee Amt Due:	\$0.00	Surchg Amt Due:	\$0.00	Total Amt Due:	\$0.00
Fee Code:					
Surcharge Fee Code:					
Most recent events (up to 7):	06/12/2006 Patent Expired for Failure to Pay Maintenance Fees. 12/28/2005 Maintenance Fee Reminder Mailed. --- End of Maintenance History ---				
Address for fee purposes:	Hogan Lovells US LLP 1999 AVENUE OF THE STARS SUITE 1400 LOS ANGELES, CA 90067				
NOTE: All USPTO fees are subject to change. If you are making a payment by mail or fax, please visit this <a href="#">link</a> or contact the Maintenance Fee Branch (671-272-6500) to confirm the amount due on the date payment is to be made. A maintenance fee payment can be timely made using the certificate of mailing or transmission procedure set forth in 37 CFR 1.8.					
<div>Run Another Query</div>					



Management card for annuities outside Japan

This card is automatically outputted by the management computer in response to the input of a starting date of the computation for annuities with respect to foreign cases.

Information included in this card.

- Output date (Date indicated at the upper right)
- Our reference number
- Management form for annuities (Transfer / Manage)
- Name of foreign associate & their reference number
- Name of Inventor(s)
- Name of Applicant(s) & their reference number(s)
- Duration
- Starting date of computation
- Expiry date
- Next annuity & payment deadline
- Country
- Application number
- Registration number

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**SWORN STATEMENT**

I, Mami Kitani, a desk worker in charge of the present case, declare that I should have handed the management card to the person in charge of the annuity management soon after it was outputted but I did not, that I had completely forgot to do so because I had put the document file back to the cabinet with the management card being left in the pocket thereof.

October 4, 2010

1-1-18-404, Wakachommachi, Higashiosaka-shi, Osaka 578-0942, Japan

Signature: Mami Kitani

DECLARATION

I, Kosaku Inaoka, am a senior partner in Ai association of patent and trademark attorneys, do declare that the statements below are true and correct in all conscience.

(1) Soon after it was discovered that the due date of the maintenance fee payment of the U. S. Patent right No. 6402070 has not been managed in our office, I asked two workers in our office, Ms. Takahashi who is a chief person of a data management section and Ms. Ohtake who handles foreign patent's maintenance job, to immediately make a throughout search for all our files if there was any other omission. The two workers made the search on August 3 and 4, 2010.

(2) As a result, the present patent right, U. S. Patent right No. 6402070, is the only one omitted from our maintenance system.

Date: October 19, 2010

A handwritten signature in black ink, appearing to read 'Kosaku Inaoka', is written over a horizontal line.

Kosaku Inaoka